

Public Service Commission of Wisconsin  
Direct Testimony of Lois J. Hubert  
Gas and Energy Division

Wisconsin Energy Corporation  
Docket 9400-YO-100

January 14, 2015

1 Q. Please state your name, business address, and occupation.

2 A. My name is Lois J. Hubert, and my business address is Public Service Commission of  
3 Wisconsin (Commission), 610 N. Whitney Way, P.O. Box 7854, Madison, Wisconsin  
4 53707-7854. I am employed by the Commission as the chief Public Utility Financial  
5 Analyst in the Gas and Energy Division.

6 Q. Please describe your qualifications and work experience.

7 A. I graduated in 1974 from Central Michigan University with a Bachelor of Science degree  
8 in Business Administration. My major was management and my minor was mathematics.  
9 I also earned a Master of Business Administration (1984) from the University of  
10 Wisconsin-Milwaukee. I have worked in the utility industry since 1970. Prior to my  
11 employment with the Commission, I was employed for 15 years at Wisconsin Electric  
12 Power Company (WEPCO). While at WEPCO, I performed various functions in the  
13 property accounting, corporate securities, and rate/regulatory areas.

14 Q. How long have you been employed by the Commission?

15 A. I have been with the Commission since July 1991.

16 Q. What are your major job responsibilities?

17 A. Since joining the Commission, I have worked with financial and affiliated interest issues  
18 in the telecommunications and energy areas. In general, my current responsibilities  
19 include advising the Commission on a range of financial issues such as rate of return and

1 capital structure, processing and analyzing securities issuance applications and approvals  
2 of affiliated interest agreements, and participating in holding company audits. I have  
3 participated in varying degrees in other merger/acquisition cases.

4 Q. What is the subject of your testimony in this proceeding?

5 A. In addition to introducing the Commission witnesses, I will be addressing three subject  
6 matters. The first subject is whether the acquisition of Integrys Energy Group, Inc.  
7 (Integrys Energy) by Wisconsin Energy Corporation (WEC or applicant) (Transaction) is  
8 in the best interest of utility consumers, investors, and the public (Direct-PSC-Hubert-3 to  
9 Direct-PSC-Hubert-12). The second is the acquisition conditions which Commission  
10 staff suggests (Direct-PSC-Hubert-12 to Direct-PSC-Hubert-21). Beginning on Direct-  
11 PSC-Hubert-21, I will discuss the third subject matter, Commission staff's concerns with  
12 the acquisition of additional interests in American Transmission Company LLC and ATC  
13 Management Inc. (ATCLLC and ATCMI; collectively, ATC) and conditions the  
14 Commission may wish to implement in regard to the acquisition.

15 As part of my analysis I have prepared Ex.-PSC-Hubert-1 which consists of five  
16 schedules.

## 17 IDENTIFICATION OF WITNESSES

18 Q. Please introduce the other witnesses testifying on behalf of Commission staff.

19 A. In addition to myself, the witnesses testifying on behalf of Commission staff are:

- 20 • Kevin O'Donnell, C.F.A. and President of Nova Energy Consultants, Inc., will be  
21 testifying on the issue of mergers and acquisitions, and related savings as well as  
22 credit worthiness issues.
- 23 • Christopher Larson, Public Utility Auditor – Principal in the Gas and Energy  
24 Division will be testifying on options for ensuring that customers share in the  
25 financial benefits of synergy savings, and ratepayer protections associated with  
26 purchase/pushdown accounting.

- 1 • Mary Kettle, Public Utility Auditor – Advance in the Gas and Energy Division  
2 will be testifying on transmission deferral balances.
- 3 • Jodee Bartels, Public Utility Auditor – Principal in the Gas and Energy Division  
4 will be testifying on the Transaction and Transition costs as well as affiliate and  
5 holding company issues.
- 6 • Kristy Nieto, Consumer Affairs Analyst in the Division of Water, Compliance  
7 and Consumer Affairs will be testifying on consumer issues.
- 8 • Kenneth Detmer, P.E., Engineer in the Gas and Electric Division will be testifying  
9 on staff's analysis of the combined companies' generation portfolio.
- 10 • Randel Pilo, Assistant Administrator in the Division of Regional Energy Markets  
11 will be testifying on the issue of wholesale and retail horizontal and vertical  
12 market power from an economics perspective and 20-years of experience with  
13 regulatory developments affecting merger and acquisition activity in the pre- and  
14 post-regional transmission organization (RTO) time frames.

#### 15 **BEST INTEREST DETERMINATION**

16 Q. What determination must be made under Wis. Stat. § 196.795(3), in order for the  
17 Commission to authorize WEC to acquire Integrys Energy?

18 A. Wisconsin Stat. § 196.795(3) states in part:

19 No person may take, hold or acquire, directly or indirectly, more than 10%  
20 of the outstanding voting securities of a holding company, with the  
21 unconditional power to vote those securities, unless the commission has  
22 determined, after investigation and an opportunity for hearing, that the  
23 taking, holding or acquiring is in the *best interest* of utility consumers,  
24 investors and the public. . . . (*emphasis added.*)

25 Q. Will WEC's acquisition of Integrys Energy be in the best interest of utility consumers,  
26 investors, and the public?

27 A. In my opinion, such a determination is difficult to assess. This is due, in part, to the  
28 applicant's apparent reliance upon other entities' mergers and acquisitions rather than an  
29 analysis of any specific opportunities with a WEC/Integrys Energy consolidation. Even  
30 the purported benefits put forward by the applicant are generalizations and, as I will  
31 testify, are subject to dispute. The lack of specific WEC/Integrys Energy analysis greatly  
32 increases the risk that the Transaction could be costly, rather than beneficial, to the utility

1 consumers, investors, and the public. The Commission staff identified above has  
2 developed a list of conditions that it believes increase the likelihood that the Transaction  
3 will be in the best interests of utility consumers, investors, and the public, if the  
4 Transaction were to proceed. These conditions are shown on Schedule 1 of Ex.-PSC-  
5 Hubert-1 and I will discuss them later in more detail in my testimony.

6 Q. Is this lack of analysis a concern restricted only to you?

7 A. No. On November 20, 2014, testimony was filed in Docket No. 14-0496, in the Illinois  
8 Commerce Commission's proceeding. The following are comments filed by parties in  
9 that case.

10 Joseph Clark on Behalf of The Retail Energy Supply Association [RESA]:  
11 "... we have also not received a commitment that it won't happen. The  
12 Joint Applicant's responses to RESA Data Request ... basically indicate  
13 that WEC does not **currently** have plans to change either LVT or Choice  
14 Programs following the close of the reorganization. ... However, given  
15 the uncertainty due to the reorganization and the vagueness of the Joint  
16 Applicant's response to RESA's data requests, RESA would like a written  
17 commitment to ensure there is no change in policy ..."<sup>1</sup>

18 Eric Lounsberry of the Illinois Commerce Commission staff: "... the  
19 Joint Applicants intend that the proposed reorganization will have no  
20 *initial* effect on the Gas Companies' customers. However, there is  
21 insufficient information for me to form a conclusion regarding any long-  
22 term effect of the proposed reorganization."<sup>2</sup>

23 Eric Lounsberry: "the Joint Applicants conducted no review to determine the  
24 level of effort and expenditure it would take on their part to make any of this  
25 happen, assuming they can make any of these changes happen at all."<sup>3</sup>

26 WEC's responses to data requests in the Illinois docket are reflective of the  
27 responses received in Commission staff data requests.

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<sup>1</sup> Pages 6 and 7 REAS Exhibit 1.0 <http://www.icc.illinois.gov/docket/files.aspx?no=14-0496&docId=221767>.

<sup>2</sup> Pages 9 and 10 of Exhibit 2.0 – Eric Lounsberry <http://www.icc.illinois.gov/docket/files.aspx?no=14-0496&docId=221775>.

<sup>3</sup> Page 19 of Exhibit 2.0 – Eric Lounsberry <http://www.icc.illinois.gov/docket/files.aspx?no=14-0496&docId=221775>.

1   **PURPORTED BENEFITS OF TRANSACTION**

2   Q.     You mentioned earlier that the benefits put forward by the company are in dispute.

3         Would you like to elaborate on that statement?

4   A.     Yes. On pages 1 to 3 of the application, the applicant lists six purported benefits of the  
5         acquisition. A seventh benefit can be found on page 5. I would like to provide additional  
6         comments as to why those benefits may not be either as large as claimed, or even qualify  
7         as benefits.

8                 First, the applicant claims that the merger will create a larger and financially  
9         stronger Midwestern utility company with greater liquidity and access to capital markets.  
10         WEC states the Transaction will enable it to pass along to its customers the benefits of  
11         lower-cost debt over the long term. WEC also states the Transaction will strengthen each  
12         of the WEC Energy operating companies, including its Wisconsin electric and gas  
13         utilities, by integrating best practices in areas such as distribution operations, large capital  
14         project management, gas supply, system reliability, and customer service.

15                I will first address better utility access to capital markets. I would note that the  
16         “larger and financially stronger Midwestern utility company” would be the holding  
17         company—WEC Energy. Under this docket, the applicant has only requested authority  
18         to acquire Integrys Energy, not to merge any of the Wisconsin utilities. In fact, the  
19         applicant indicates it has not even studied the issue of merging any of the utilities.

20                Regarding access to capital markets, Wisconsin Public Service Corporation  
21         (WPSC), WEPCO, and Wisconsin Gas, LLC (WG) (collectively the Wisconsin Operating  
22         Companies) will not receive any benefit. All three are capable of issuing, and are required  
23         under Wisconsin statutes to issue, their own securities. Furthermore, WEPCO and WPSC

1 have been issuing index eligible securities.<sup>4</sup> While WG securities issuances are below  
2 index levels, it has not sought the required Commission affiliated interest approval of a  
3 parent company guarantee so that it is capable of issuing securities without relying on its  
4 parent holding company becoming financially stronger. Any equity contributed by the  
5 holding company parent will cost ratepayers the utility cost of equity regardless of the size  
6 of the holding company. Lastly, any cash flow of the holding company will not cause the  
7 Wisconsin Operating Companies to “avoid incremental costs and fees that would otherwise  
8 be incurred if it needed to secure financing from the capital markets,” because the holding  
9 company cash flows do not impact the financing (debt only) that the utilities incur because  
10 they, the utilities, maintain balanced capital structures.

11 Regarding liquidity, there are two concepts of liquidity; one that relates to how  
12 easily an investor can dispose of its stock holdings (WEC Energy common stock) and the  
13 other relates to how quickly an entity can access liquid funds. The applicant must be  
14 referring to the former, not the latter, because the latter, which is a bigger concern for the  
15 Wisconsin Operating Companies and their customers, is related to business strategy  
16 rather than size. Adding \$1.5 billion of debt to the holding company will impact the  
17 liquidity of WEC Energy. The rating agencies have expressed concern that WEC’s credit  
18 metrics could deteriorate and have put WEC on credit watch for possible downgrading.  
19 Fitch noted in its June 24, 2014, announcement:

20 The proposed acquisition results in a meaningful increase in consolidated  
21 leverage compared to WEC’s current and projected pre-acquisition  
22 financial position. This is primarily driven by the combination of  
23 \$1.5 billion of acquisition debt to be issued by WEC and a delay in  
24 management’s previous plan to reduce existing parent debt. Fitch

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<sup>4</sup> Bonds that are included in indices are generally less expensive. An issuance size must be at least \$250 million. WPSC’s older issues are smaller; however, WPSC staff discussed with Commission staff a few years ago the plans to begin issuing index eligible debt, and its recent issuances qualify.

1 estimates WEC's pro-forma holdco debt to increase to approximately 30%  
2 of total consolidated debt from 16% pre-acquisition. Management has  
3 indicated they intend on reducing parent debt over time *but has not*  
4 *established specific targets. (emphasis added.)*<sup>5</sup>

5 The Wisconsin Operating Companies are more at risk that the holding company  
6 credit will pull their ratings down rather than improve their respective credit ratings.

7 As to the matter of incorporating the best practices, WEC repeatedly responded to  
8 data requests that it has not undertaken any review of actual options. Consequently, such  
9 a statement appears to Commission staff, at best, to be speculation on the part of the  
10 applicant. If the Commission chooses to rely on this claim, it may want to bolster such  
11 reliance by ensuring that the customers receive the benefits of such purported efficiency  
12 upfront.

13 Q. What is the second purported benefit advanced by the applicant?

14 A. The second benefit is that the acquisition will maintain WEC's and Integrys Energy's  
15 long traditions of making significant contributions to regional economic development and  
16 generously supporting educational, cultural, and charitable activities in the communities  
17 they serve.

18 Commission staff witness Ms. Nieto will discuss the actual contributions of the  
19 Wisconsin Operating Companies and their parent holding companies. However, it needs  
20 to be noted that this purported benefit is not really a new benefit that would be enabled  
21 because of a consummated Transaction. The Wisconsin Operating Companies have a  
22 long-standing history of making contributions. In fact, most prominent companies,  
23 regardless of their business, make contributions to the communities where they have a  
24 business presence. There is no reason that the Wisconsin entities would not or could not

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<sup>5</sup> ([PSC REF#: 219089](#)), Attachment PSCW-01-26 Fitch – WEC.pdf

1 continue to make contributions to their communities without the acquisition. To be a  
2 genuine new benefit, the applicant should be offering to provide more contributions, not  
3 maintain the *status quo*.

4 Q. What is the third benefit?

5 A. The applicant asserts that it will create a more diversified generation portfolio with a  
6 larger geographic footprint. In Direct-WEC-Lauber-7, the applicant argues that it will be  
7 possible to “rationalize generation”, that is to find the right mix of energy efficiency,  
8 renewable generation and non-renewable generation, thereby saving money for  
9 customers. However, in data responses, the applicant states that no decision has been  
10 made to jointly plan the systems.<sup>6</sup> Thus, the company has provided nothing to support its  
11 claim. Commission staff witness Mr. Detmer will discuss his review of the impact of the  
12 merger on the combined generation portfolio.

13 Q. What is the fourth benefit?

14 A. The applicant argues that the acquisition will facilitate continued prudent investment in  
15 needed utility infrastructure, including the ability to use the strong cash flow of the  
16 combined companies to fund future investments without issuing new equity (holding  
17 company equity).

18 As with contributions, discussed above, there is no reason to assume that without  
19 the acquisition the Wisconsin Operating Companies would not be able to continue prudent  
20 investment in needed infrastructure. Consequently, no new benefit occasioned by the  
21 Transaction is being offered. Furthermore, when a utility needs capital, it is expected to  
22 raise a balanced mix of equity and debt. In the days before holding companies, utilities

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<sup>6</sup> See ([PSC REF#: 224987](#)).

1 would have periodic equity issuances and maintained dividend reinvestment and stock  
2 purchase plans. With the advent of holding companies, the holding company parent needs  
3 to provide the equity portion (beyond utility retained earnings) needed for the balanced  
4 capital structure. The Commission does not regulate the debt and equity issuance of the  
5 holding company, and unless the holding company parent is excessively leveraged, the  
6 Commission has not been concerned with whether the parent raised the capital through  
7 cash flow, debt issuance, or equity issuance. The Commission has been concerned with  
8 whether the holding company is healthy, not whether the holding company's stockholder  
9 mix is changing because of stock issuances.

10 In addition, it should be noted that the applicant is arguing that a benefit of the  
11 acquisition is that the post-acquisition cash flows will allow the holding company to fund  
12 utility cash needs without issuing common stock. However, the pre-acquisition WEC and  
13 Integrys Energy holding companies are not issuing common stock. In fact, WEC has  
14 been in the process of repurchasing common stock.

15 Q. Please comment on the applicant's fifth benefit, that the acquisition will position the  
16 combined entity for continued growth.

17 A. This benefit is not clearly specified, but would appear to be referring to continued  
18 earnings growth of the holding company, as the acquisition will not result in utility  
19 growth. Again, one large holding company does not automatically provide more growth  
20 than the two existing holding companies.

21 Q. Please comment on the applicant's sixth benefit.

22 A. Specifically referencing customer benefits, the applicant again reiterates economies and  
23 best practices. However, the applicant's data responses do not identify or quantify these

1 benefits, and instead rely upon Mr. Reed's analysis of other mergers to support the  
2 purported benefit levels.<sup>7</sup> Commission-sponsored witness Mr. O'Donnell will testify on  
3 his review of potential merger savings.

4 Q. Please comment on the applicant's statement that it expects the vast majority of  
5 reductions in employee headcounts that result from the Transaction will come through  
6 attrition and voluntary severance over time.

7 A. WEC has promised to honor labor contracts and proposes as a condition of the  
8 Transaction that no acquisition-related reductions to union-represented employees in  
9 Wisconsin will occur for two years. These employees tend to hold line jobs that are not  
10 as likely to be affected by job consolidation as non-represented jobs. Approximately one-  
11 third of all Wisconsin Operating Companies jobs and all Integrys Business Support, LLC  
12 jobs in Wisconsin are non-represented. The applicant has confirmed that there are no  
13 plans to extend the two-year retention plan to non-represented employees in Wisconsin.

14 Q. Beginning on page 11 of the application, and again beginning on Direct-WEC-Lauber-6,  
15 the applicant assigns each of the seven-purported benefits to the three groups, utility  
16 consumers, investors, and the public, listed in Wis. Stat. § 196.795(3). Do you have any  
17 further comments?

18 A. Yes. For utility consumer benefits, the applicant lists cash flow for infrastructure  
19 investment. That has not been a problem for Wisconsin utilities, and as I discussed  
20 earlier, the creation of a larger holding company does not affect the cost of capital paid  
21 by utility ratepayers. In its application, the applicant also proposes that there will be cost

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<sup>7</sup> Direct-WEC-Reed-34 ([PSC REF#: 213334](#)) "Neither the Companies nor Mr. Reed have conducted a detailed analysis of the potential merger savings specific to the merger of WEC and Integrys." ([PSC REF#: 224092](#)) Lastly, while neither WEC nor Integrys has conducted a detailed analysis of the potential merger synergy savings specific to the merger of WEC and Integrys . . . " ([PSC REF#: 222692](#))

1 savings. However, to date, the applicant has conducted no analysis to verify that this is in  
2 fact the case. Cost savings provide no customer benefits until they are incorporated into  
3 the customers' rates, and the applicant's current commitment is basically that, ratepayers  
4 will see reduced costs someday – maybe.

5 For public benefits, the applicant argues that the utilities will continue to make  
6 charitable contributions, as if contributions would be discontinued otherwise. The  
7 applicant represents in Ex.-WEC-Lauber-1, its application<sup>8</sup> that the headquarters of the  
8 post-merger entity and associated jobs will be located in Wisconsin and critical decisions  
9 affecting energy policy in Wisconsin will continue to be made in Wisconsin. In its news  
10 release, included as Schedule 2 of Ex.-PSC-Hubert-1, the applicant more specifically stated  
11 that it would be headquartered in metropolitan Milwaukee. However, in data request  
12 responses, the applicant states that it will not accept uncontested a condition obligating the  
13 company to meet its commitment in its application and that there are “no present plans to  
14 move” headquarters.<sup>9</sup> The applicant argues that the vast majority of employee reductions  
15 will be through attrition, while extending job protections only to those less likely to need  
16 them, and is providing no protection to those jobs most likely to be redundant.

17 Lastly, regarding investor benefit, the application says little other than that  
18 stockholders will vote for the acquisition if they feel it is in their best interest. However,  
19 as I have discussed and Mr. Lauber confirms in his direct testimony, the benefits put  
20 forward by the applicant mostly accrue to the holding company investors, and the  
21 benefits to the public and utility ratepayers are either not genuine benefits or are based on

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<sup>8</sup> Page 14 ([PSC REF#: 213336](#)).

<sup>9</sup> See ([PSC REF#: 224207](#)).

speculation, unsupported by firm commitments. The applicant has offered very little or nothing quantifiable to the ratepayers and the public other than promises.

### **CONDITIONS FOR CONSIDERATION**

Q. Please explain Schedule 1 of Ex.-PSC-Hubert-1.

A. This exhibit is a compilation of the conditions that Commission staff believes would ensure that the Transaction is in the best interest of the utility consumers, investors, and public. Some of the conditions were proposed by the applicant and are supported by Commission staff; others were proposed by Commission staff and were uncontested by the applicant. The remaining conditions are those proposed by Commission staff that the applicant will likely contest. The conditions are organized by type of condition, not by whether they are contested.

Q. Why do some of Commission staff's proposed conditions repeat those proposed by the applicant?

A. If the Commission determines that the Transaction meets the requirements of Wis. Stat. § 196.795(3), the Commission ensures at least two things by incorporating the applicant's proposed conditions explicitly in its final decision. First, it reduces potential misunderstanding as to what the commitment made by the applicant, and accepted in whole, or modified, by this Commission, entails. Second, it ensures that the commitment remains in place until this Commission determines that it is no longer applicable, rather than the applicant discontinuing the commitment because it feels it is no longer applicable. Furthermore, any conditions established in other jurisdictions could also be reversed, which would negate this Commission's reliance on their continuing

1 applicability.<sup>10</sup> The applicant may subsequently file with the Commission a request to  
2 remove a condition, including documentation as to why the condition is no longer  
3 applicable, and this Commission could then evaluate its continued need at that time.

#### 4 **RING-FENCING CONDITIONS**

5 Q. Please describe what ring-fencing conditions are?

6 A. Ring-fencing conditions are those which are intended to insulate the Wisconsin Operating  
7 Companies from actions of the holding company or other affiliates that might negatively  
8 impact the Wisconsin Operating Companies. As Mr. O'Donnell notes, these often  
9 include limiting dividends and other cash transfers to the holding company, and  
10 restrictions on joint financing or co-mingling of funds, such as money pools.

11 Q. What is this Commission's position on ring-fencing?

12 A. This Commission has a reputation for establishing ring-fencing provisions which protect the  
13 Wisconsin utilities' credit ratings. Furthermore, the Wisconsin Public Utility Holding  
14 Company Act, 1985 Wisconsin Act 79, which created Wis. Stat. § 196.795, mandates certain  
15 restrictions specifically for holding companies. The ring-fencing restrictions are shown in  
16 Schedule 1 of Ex.-PSC-Hubert-1.

17 Q. Please describe the dividend payment restrictions.

18 A. The Wisconsin Operating Companies each have a dividend restriction. These restrictions  
19 often first appeared with the formation of the holding company and have been reviewed  
20 and renewed in each subsequent rate case. The basis for the restriction is to ensure that  
21 the utility's need for equity is met first before the utility can transfer funds to the parent  
22 for the parent's dividend payment and other investment needs. The most recently

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<sup>10</sup> ([PSC REF#: 222169](#)).

1 imposed—and still current—dividend restrictions for the Wisconsin Operating  
2 Companies are as follows:

3 **WPSC:** WPSC shall not pay, without Commission prior approval, normal  
4 dividends greater than 103 percent of the prior year's common dividend.  
5 WPSC shall notify the Commission if any special dividend is  
6 contemplated. No special dividend that might cause the common equity,  
7 on a financial basis, to drop below the projected calendar year average of  
8 51.00 percent or the dollar amount of equity reflected in the test year is  
9 permitted without Commission approval. (Docket 6690-UR-123)

10 **WEPCO:** WEPCO may not pay dividends in excess of the amount  
11 forecasted in this proceeding if such dividends cause the average annual  
12 common equity ratio, on a financial basis, to fall below the test year  
13 authorized level of 51.00 percent. WEPCO may not pay a special  
14 dividend in excess of the forecasted dividends at the end of the year unless  
15 the additional payment does not reduce the average annual common equity  
16 ratio, on a financial basis, below the forecasted level of 51.00 percent.  
17 (Docket 05-UR-107)

18 **WG:** WG may not pay additional dividends above those estimates  
19 deemed reasonable in this proceeding without prior Commission approval,  
20 if, after the payment of such dividends, the actual average common equity  
21 ratio, on a financial basis, would be below the test year authorized level of  
22 49.50 percent. (Docket 05-UR-107)

23 Each of the Wisconsin Operating Companies have varying dividend restrictions,  
24 often resulting from differing needs and/or concerns at the time the initial restrictions  
25 were drafted. At minimum, the Commission may wish to conform the three restrictions  
26 to a standard form. I propose that the following would be reasonable.<sup>11</sup>

27 **WEPCO/WG/WPSC:** WEPCO/WG/WPSC may not pay dividends  
28 above those estimates deemed reasonable in this proceeding<sup>12</sup> without  
29 prior Commission approval, if, after the payment of such dividends, the  
30 actual average common equity ratio, on a financial basis, would be below  
31 the test year authorized level of 51.00/49.50/51.00 percent.<sup>13</sup>  
32 WEPCO/WG/WPSC shall notify the Commission if any special dividend  
33 is contemplated.

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<sup>11</sup> Three dividend restrictions would be issued, one for each Wisconsin Operating Company.

<sup>12</sup> For initial purposes, it would be the amount in the last rate case before the Transaction, assuming approval.

<sup>13</sup> These are the target levels last established by the Commission in a rate case proceeding.

1           The principle of allowing the test-year forecasted dividend was based on the fact  
2           that when dividend restrictions were first implemented, the utility was the only operating  
3           company and the holding company relied on the utility's dividends to meet the holding  
4           company's dividend requirements. Regardless of events, the dividend was paid to ensure  
5           dividend payments to the holding company's stockholders.

6           This is no longer the case. The proposed new company, WEC Energy, will have  
7           seven regulated utilities in four states plus several non-regulated subsidiaries, including We  
8           Power. The holding company is capable of its own financing and is not dependent on the  
9           utility's dividend payment. Furthermore, WEC Energy will have capital needs for the  
10          Peoples Gas Light and Coke Company's (PGL) accelerated main replacement program and  
11          the repayment of the acquisition debt. Wisconsin utility funds should be used first to meet  
12          the Wisconsin utility's capitalization forecast before being made available to non-  
13          Wisconsin-jurisdictional entities, including PGL, or for repaying holding company debt.

14          In its April 16, 1993, Findings of Facts, Conclusions of Law, and Order in docket  
15          2180-TR-103, the Commission found:

16               An appropriate total company common stock equity floor for GTE North  
17               is 57 percent. It is just and reasonable that the applicant apply for and  
18               receive Commission approval before it issues any common stock dividend,  
19               including the forecasted dividend, that will reduce the total company  
20               common equity ratio below 57 percent.

21          Mr. O'Donnell testifies that recently, similar restrictions have been included in  
22          merger conditions in other jurisdictions. Consequently, the Commission may wish to add  
23          the following second dividend restriction to the acquisition conditions:

24               An appropriate common stock equity floor, on a financial basis for  
25               WEPCO/WG/WPSC is 48.5/47/49 percent.<sup>14</sup> It is just and reasonable that

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<sup>14</sup> These are the lowest level of the range last established by the Commission in a rate case proceeding. (WEPCO – 48.5 to 53.5 percent) (WG – 47.0 to 52.0 percent) (WPSC – 49 to 54 percent).

1 WEPCO/WG/WPSC apply for and receive Commission approval before it  
2 issues any common stock dividend, including the forecasted dividend, if  
3 after the payment of such dividends the actual common equity ratio, on a  
4 financial basis, would be below 48.5/47/49 percent. For purposes of  
5 calculating off-balance sheet equivalents, the test year average should be  
6 used. Furthermore any dividend declared and booked in a month where  
7 the equity falls below the floor will be presumed to have caused the equity  
8 reduction.

9 Q. Please describe inter-affiliated borrowing.

10 A. The provisions of Wis. Stat. § 196.795(5)(c) and (d) prohibit the Wisconsin Operating  
11 Companies from lending money to, or guaranteeing the obligation of, a holding company  
12 which is not a public utility or any nonutility affiliate with which it is in the holding  
13 company system. Under definitions in Wis. Stats. § 196.795, non-Wisconsin  
14 jurisdictional utility operating companies are considered nonutility affiliates.  
15 Furthermore, participation in a money pool would constitute an affiliated interest  
16 transaction requiring Commission approval, and the Commission has treated guarantees  
17 as securities requiring Wis. Stat. Ch. 201 authorization.<sup>15</sup>

18 The Commission may wish to include an acquisition condition stating that:

19 WEPCO, WG, and WPSC may not lend money to, or guarantee the  
20 obligation of, WEC Energy nor any affiliate with which it is in the holding  
21 company system. WEPCO, WG, and WPSC may not lend money to each  
22 other, nor guarantee each other's obligation without Commission  
23 authorization of the arrangements.

24 Q. Do you have any conditions related to debt and increases in debt cost?

25 A. Yes. In testimony before the Illinois Commerce Commission, Mr. Lauber indicated that  
26 as of December 31, 2013, WEC's holding company had \$817 million of debt outstanding  
27 (15.6 percent of consolidated debt). Furthermore, as of December 31, 2015, WEC

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<sup>15</sup> August 15, 1990, *Findings of Fact, Conclusion of Law, Certificate of Authority and Order* in docket 6690-SB-111 pages 5-6; and September 1, 2006, *Certificate of Authority and Order* in docket 4220-SB-126 page 3 ([PSC REF#: 60484](#)).

1 Energy, at the holding company level, is projected to have \$2.314 billion (20.8 percent of  
2 consolidated debt). This does not consider the debt held by the Integrys Energy sub-  
3 holding company. When combined, the total debt held by the holding companies will be  
4 \$3.485 billion and will comprise 31.3 percent of the consolidated debt outstanding. For  
5 WEC Energy, the post-acquisition capital structure is a debt-to-capital ratio of  
6 approximately 56 percent. Schedule 3 of Ex.-PSC-Hubert-1 includes the excerpt of that  
7 testimony. This acquisition will result in a highly leveraged holding company. The  
8 servicing and repayment of this debt is dependent on cash flows from the various  
9 subsidiaries, including the Wisconsin Operating Companies.

10 This Commission does not regulate the capitalization of the holding company.  
11 Neither does it regulate the business of its subsidiaries other than the Wisconsin  
12 Operating Companies. However, a credit downgrading at the holding company level can  
13 have adverse impact on the credit of the utility. It is not unusual for a holding company  
14 downgrade to be sufficient to cause a subsidiary to be downgraded simultaneously by  
15 association. Consequently, the Commission may wish to condition the Transaction on  
16 holding ratepayers harmless for any increased costs determined by the Commission to be  
17 related to downgrading or other credit degradation of the holding company and/or non-  
18 utility affiliates. The following proposed condition is included in Schedule 1 of Ex.-PSC-  
19 Hubert-1:

20 Any increased capital costs determined by the Commission to be related to  
21 downgrading or other credit degradation of the holding company and/or  
22 non-utility affiliates, should be removed from the cost of capital for  
23 WEPCO, WG, and/or WPSC.

24 In docket 6690-SB-137 when WPSC proposed to provide short-term interim  
25 financing pending Integrys Energy's permanent equity contribution for the Fox Energy

Center purchase, the Commission required periodic reports on the status of the contribution. As the Fitch report noted earlier stated, the debt levels at the holding companies will increase greatly and WEC has not established a specific target level. The Commission may wish to require WEC Energy to file similar reports until the debt levels at the holding companies declines to below current levels. Proposed language would be:

WEC Energy shall file with the Commission, within 90 days of the consummation of the acquisition, a report detailing the debt held at the WEC Group holding company and Integrys sub-holding company levels, its relationship to total holding company debt and the company's plans to reduce the debt. WEC Energy shall file with the Commission updated reports every 90 days until the debt at the holding companies declines to 15 percent of total debt.

#### **LEVELIZATION OF WEPCO AND WPSC RATES AND REOPENER**

Q. Please discuss the proposed conditions for "levelization" of WEPCO and WPSC rates and reopener for this proceeding.

A. Addressing "levelization" of WEPCO and WPSC rates, on page 5 of the Application, the applicant proposed that the Commission include a condition that "[b]efore filing for approval of any legal merger of utilities or 'levelization' of rates between utilities, WEC Energy will *confer* with Commission staff and other affected parties." (*Emphasis added.*) "Conferring" has no binding effect, and is among the weakest commitments the applicant could make. Substantial concern exists in this proceeding about the disparity between WPSC and WEPCO rates. The Commission may wish to strengthen the condition by the following:

For [5 to 10] years from the consummation of the acquisition, before filing for approval of any legal merger of utilities or "levelization" of rates between utilities, WEC Energy shall work with Commission staff and other affected parties to develop a proposal that is acceptable to the parties.

1 Under this condition, if the applicant is unable to develop an acceptable proposal  
2 within the time period established by the Commission as reasonable, it would not be  
3 allowed to propose a merger of the operating utilities or rate levelization without the  
4 Commission removing this condition through an affirmative action. The condition would  
5 expire in 5 to 10 years as set by the Commission.

6 Q. Please describe the proposed “reopener condition.”

7 A. To effectuate the Transaction, jurisdictional approvals or waivers of authority are required in  
8 five regulatory jurisdictions: the state commissions of Wisconsin, Illinois, Michigan,  
9 Minnesota, and the Federal Energy Regulatory Commission (FERC). While initial filings  
10 were made in the four states simultaneously on August 6, 2014, and the FERC filing was  
11 made approximately a week later on August 15, 2014, each jurisdictional review is  
12 progressing on different time schedules. The Minnesota Office of the Attorney General –  
13 Antitrust and Utilities Division recommended that, “The Commission should exercise its  
14 jurisdiction in this matter to ensure that Minnesota ratepayers have similar protections and  
15 gain equivalent benefits, and to ensure that any concessions made to ratepayers in other  
16 jurisdictions are not recouped from consumers in Minnesota.” Furthermore, “the  
17 [Minnesota] Commission should refrain from making a final decision in this docket while  
18 regulatory matters in other jurisdictions proceed.” Schedule 4 of Ex.-PSC-Hubert-1 is an  
19 excerpt of the comments.

20 While the Minnesota Attorney General’s point is valid, not every jurisdiction can be  
21 last and have the benefit of reviewing the other jurisdictions’ determinations. Commission  
22 staff notes that both the acquiring and the acquired holding companies are Wisconsin  
23 jurisdictional and the largest operating utilities in the holding company systems are

1 Wisconsin utilities. Consequently, the Commission appropriately should be concerned with  
2 the impact of all conditions imposed by other jurisdictions on the holding company,  
3 Wisconsin ratepayers, and the public.

4 The approval authority and the level of state interest varies by jurisdiction. This  
5 Commission is positioned to be the first Commission to make its determination, and it  
6 will not have the benefit of knowing what conditions will be imposed by other  
7 jurisdictions. Based on the public information from the other jurisdictions, it is possible  
8 that some conditions from other jurisdictions could have adverse impacts on Wisconsin  
9 customers. This Commission may wish to have the opportunity to re-evaluate its  
10 decision in this Transaction to reflect conditions imposed by another jurisdiction. For  
11 example, the Commission is a party to ongoing litigation at FERC relating to the  
12 allocation of costs under the System Support Resource (SSR) Agreement for the Presque  
13 Isle Power Plant (PIPP) in the Upper Peninsula. On January 13, 2014, one day before  
14 staff's initial testimony was due, WEC announced that it would be selling off its  
15 Michigan retail business, including PIPP, as a condition of a settlement reached in this  
16 Transaction with parties in Michigan. The effect of this sale on the Transaction is  
17 unknown at this time.

18 In its December 18, 2014, Commission meeting discussing the proposal to extend  
19 the proceeding schedule to coincide with the extensions granted in other jurisdictions,  
20 this Commission took into consideration the possibility of reopening this proceeding as  
21 may be appropriate based on the other jurisdictions' conditions. In light of the reliance  
22 placed on a reopener, the Commission may wish to include a condition to provide

1 specifics for the operation of the reopener. The reopener below is framed broadly but  
2 could be modified as the Commission thinks appropriate:

3 Consummation of the acquisition shall be conditioned upon a Commission  
4 review of acquisition conditions, from all other jurisdictions having  
5 approval authority relating to various aspects of the acquisition, to  
6 determine whether further conditions are subsequently required. The  
7 acquisition shall not be consummated until the earlier of: 1) a  
8 Commission determination that additional conditions are warranted, or 2)  
9 30 days after the last jurisdiction approval is granted, in the event no  
10 Commission instigation of a review is begun within 30 days. Regardless  
11 of whether a Commission review is performed, the cost of any acquisition  
12 condition from another jurisdiction subsequently found to have an adverse  
13 cost impact on Wisconsin customers, shall be absorbed by WEC Energy  
14 without recourse to, or reimbursement by, WEPCO, WPSC, or WG.

15 **Q.** Have you reviewed the terms of the proposed sale of WEC's Michigan retail electric  
16 business?

17 **A.** No. I was only made aware of this transaction the day before initial testimony was due in  
18 this case, and I have only read information that is publicly available from news sources.  
19 The sale of a portion of WEC's business could have an impact on Wisconsin customers.  
20 Thus, Commission staff and other parties need more time to review the effects of this  
21 proposed transaction to Wisconsin. I am hereby reserving Commission staff's ability to  
22 provide subsequent testimony on this matter in later rounds.

## 23 **ATC INVESTMENT**

24 **Q.** Have you read the testimony of staff witness Randel Pilo, and do you have further  
25 comments on acquisition conditions relating to the applicant's proposed ownership in  
26 ATC?

27 **A.** Yes, I have read Mr. Pilo's testimony and would like to discuss possible conditions  
28 related to both the ownership interest in American Transmission Company (ATC), which  
29 consists of Class A common stock holdings in ATCMI and membership units in

1 ATCLLC, and the voting limitations proposed by the applicant. I would like to  
2 emphasize that I did not investigate possible vertical or horizontal control issues. Rather,  
3 my comments relate to the public interest aspects of ATC ownership, recognizing that in  
4 its December 22, 2000, Certificate of Authority and Final Decision in docket 137-NC-  
5 100, the Commission concluded that ATCMI and ATCLLC jointly constitute a public  
6 utility, as defined in Wis. Stat. § 196.01(5). In addition, both entities are owned by  
7 operating electric utilities, the majority of which reside in the state of Wisconsin and  
8 serve Wisconsin customers and citizens.

9 Q. Please comment on ownership interest in ATC.

10 A. 1997 Wisconsin Act 204 required every transmission-owning utility to either transfer  
11 control over its transmission assets to an independent system operator or divest its  
12 interest to an independent transmission owner. The first would cause additional  
13 operational work, the latter would cause the loss of the utility's transmission investment.  
14 1999 Wisconsin Act 9 provided a third option, divestment of the utility's transmission  
15 assets to ATCLLC in exchange for an ownership interest in ATCLLC and ATCMI.

16 The third option facilitated ATC's formation. Consequently, as of October 31,  
17 2014, ATCLLC reports 29 members.<sup>16</sup> As shown on Schedule 5 of Ex.-PSC-Hubert-1,  
18 there is a large range of ownership interests, with Integrys Energy companies owning  
19 \$373,942,381 or 34.07 percent of ATCLLC and WEC companies owning \$269,226,064  
20 or 26.24 percent of the ATCLLC. In comparison, the next four largest ATCLLC  
21 members<sup>17</sup> combined (Alliant Energy companies, Rainy River Energy Corporation,

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<sup>16</sup> ([PSC REF#: 224850](#)).

<sup>17</sup> ATCLLC owners are referred to as "Members" in the organizational documents while ATCMI owners are referred to as "Shareholders."

1 WPPI Energy, and MGE Energy companies) own \$365,584,349 or 34.38 percent. The  
2 remaining 23 members own \$57,302,224 or 5.32 percent. This latter group is largely  
3 comprised of Wisconsin cooperatives and municipal utilities, who in turn serve  
4 Wisconsin electric customers.

5 Q. Why did you provide an ownership breakout of ATC owners?

6 A. The data is useful in analyzing both the issue of ownership and voting power. It also  
7 highlights that no individual company has the ability by majority interest to dictate the  
8 direction of ATC without the concurrence of at least one other owner.

9 Q. Please comment on the ability of owners to influence ATC.

10 A. Influence can be wielded in two ways, through formal influence and informal influence.  
11 Formal influence would be the voting power of an ATCMI shareholder, or an ATCLLC  
12 member. It would also be reflected in the number of board positions held in ATCMI by  
13 the shareholder's affiliates. Informal influence would be through "presence," which  
14 could take various forms such as relative size, financial power, career influence, or  
15 anything else which could influence the intended person or entity. Mr. Reed references  
16 this type of informal influence on Direct-WEC-Reed-40. There he states:

17 Finally, the scale, operational expertise and financial resources of WEC  
18 Energy Group will equip it to more effectively represent the interest of the  
19 states in which it operates and maintain its independence in a  
20 consolidating industry. A strong State and regional voice in national  
21 energy policy debates is significant benefits to ensuring that these interest  
22 are both well-represented and heard.

23 While Mr. Reed touts this informal influence as a benefit, it needs to be clarified  
24 that it is only a benefit to entities who share the position of the influential entity, in  
25 Mr. Reed's example, WEC Energy. If one's position is opposite that of the influential  
26 entity, this would not be construed to be a benefit.

1 Q. Please comment on the value of ATCLLC.

2 A. The applicant acknowledges in a data response to the Michigan Public Service  
3 Commission that the ATC investment was a factor in considering the purchase of  
4 Integrys.

5 An advantage perceived by WEC in acquiring a greater stake in ATC is to  
6 increase WEC's share of income, potential gain and cash flow from its  
7 ATC investment. The advantage perceived by WEC in acquiring a greater  
8 stake in ATC was one of many factors considered in the purchase of  
9 Integrys.<sup>18</sup>

10 This is not surprising since ATC, under FERC tariffs, has formula rates and  
11 currently earns 12.20 percent return on equity. There is also the potential for substantial  
12 capital gain. ATC is not publically traded. ITC Holdings is a stand-alone transmission  
13 company and its stocks currently trades above 3.5 times its book value. Furthermore, the  
14 applicant will gain control of ATC through the acquisition and the sale of a majority  
15 interest in an entity often commands a control premium. Schedule 5 also shows the  
16 estimated market value of the individual ownership interests based on a 3.5 times market  
17 to book valuation.

18 Q. Please identify Commission staff's concerns with the applicant's proposal to limit its  
19 voting to 34.07 percent.

20 A. On page 17 of the application, WEC commits that "on all matters requiring a vote of the  
21 Manager's owners [ATCMI], the combined company will independently vote only  
22 34.07% of the Manager's shares [ATCMI]." However, with respect to certain  
23 fundamental corporate matters, the applicant proposes to use its full voting power. These  
24 fundamental corporate matters include: (1) sales of all or substantially all of the assets of

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<sup>18</sup> Page 2 of ([PSC REF#: 222385](#)).

1 ATC[appears to be ATCLLC]; (2) a change in control of ATC [ATCLLC] or the  
2 Manager[ATCMI]; (3) bankruptcy; (4) an initial public offering; (5) the merger or  
3 consolidation of ATC [ATCLLC] with, or a proposal to acquire all or substantially all of  
4 the assets of, another company; and (6) any proposal to amend ATC's [ATCLLC] or the  
5 Manager's [ATCMI] governing documents that would reduce the combined company's  
6 rights as a member or shareholder. The applicant further proposes that it will not use its  
7 full ownership interest to initiate any action on the fundamental corporate matters, only to  
8 protect and preserve its economic interest in ATC if such actions are initiated by others.

9 As the brackets highlight, there are two entities which make up ATC; ATCMI and  
10 ATCLLC. There are multiple governing documents, and the rights of the owners are not  
11 identical. There may be some lack of clarity in WEC's description as to what ATC entity  
12 is involved in the related voting. Consequently, the Commission may wish to clarify, if it  
13 chooses to limit voting as discussed shortly, that the limitation applies to voting on  
14 ATCMI shareholder as well as ATCLLC member issues.

15 Q. Why might the Commission wish to consider whether it is more appropriate to limit  
16 voting on all issues, even those considered "fundamental corporate matters," to  
17 34.07 percent, as well as applying the limitation on voting to ATCLLC member issues?

18 A. The 29 members/shareholders of ATC share ownership based on their proportional interest.  
19 Dividends are paid out proportionally and capital calls are open to members proportionally.  
20 Generally, a member's proportional investment in ATCLLC declines if it sells a portion of  
21 its ownership or does not contribute additional capital in response to a capital call.  
22 Similarly, a member's proportional investment increases if it acquires all or part of another  
23 member's ownership or makes additional capital calls as allowed in Section 3.6(c) of the

1 Operating Agreement to meet the capital calls declined by other members. Thus, all  
2 members have a financial interest in all transmission lines built by ATC.

3 The fundamental corporate matters that WEC proposes to protect with retained  
4 “defensive” voting rights would have a significant impact on the other 27 remaining  
5 members and their \$423 million book value (\$1.480 billion market value) investment.

6 Q. Would you please give some examples prompting your concern?

7 A. Yes. First, as discussed shortly, WEC Energy could gain control of whether, when, and  
8 who might acquire ATC. While the applicant says it will not “initiate” any action, it is  
9 unclear what this might mean. It could mean that WEC Energy will not bring forward a  
10 proposal to sell assets; or it could also apply in a case where WEC Energy negotiates with  
11 a third party, under terms it finds favorable, and then the third party initiates the proposal.  
12 A restrictive interpretation of “initiate” could exclude a situation where the third party  
13 initiates negotiations with WEC Energy privately and only after reaching agreement  
14 presents the proposal more broadly to the ATC stakeholders. WEC Energy might be the  
15 only entity interested in selling all of ATC, but its 60 percent voting interest would ensure  
16 that such a transaction would proceed. The same applies to a merger or consolidation.

17 Second, the voting power might affect the evolution of the governing documents.  
18 While situations may change, no proposals could be made to update the governing  
19 documents unless they suited WEC Energy. Relatedly, the meaning of “protect and  
20 preserve” is open to considerable interpretation depending upon the nature of the myriad  
21 of business circumstances that might arise. If a governing document is under review for  
22 updating, WEC Energy might only veto proposed changes, but it might also propose

1 alternate language to reflect its interest—which could evolve in ways not foreseeable at  
2 this time.

3 Q. Will the applicant lose ownership rights if it Commission limits it to only 34 percent voting  
4 on the fundamental rights?

5 A. WEC states in its data response to PSCW-01.07(f)<sup>19</sup> that the first five items listed do not  
6 “currently” require a vote by owners, only the amendment of governing documents. This  
7 being the case, restricting WEC Energy voting to 34 percent has even less impact on WEC’s  
8 current rights than would be implied by WEC’s request to retain full voting rights. Use of  
9 the term “currently” implies that it could change in the future. Granting the full voting  
10 rights is more likely to result in WEC Energy obtaining more formal power should the  
11 governing document be amended to transfer voting authority on the first five items.

12 Furthermore, the lack of current ownership voting on the first five issues should not  
13 affect any Commission decision whether to restrict post-transaction voting rights. The  
14 Transaction is not expected to occur for several months. I am not aware of any restrictions,  
15 inhibiting WEC and Integrys Energy from pursuing, at any time, changes to the governing  
16 documents to allow ownership voting by the time of the Transaction.

17 The applicant states that it is only interested in the investment opportunities of ATC.  
18 If the Commission allows this Transaction to proceed without restricting the applicant’s  
19 influence, it would result in ATC’s ownership interests essentially being under the control of  
20 only one company. Restricting the applicant to 34.07 percent voting on all corporate  
21 matters would still result in more voting power than WEC currently has today.

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<sup>19</sup> ([PSC REF#: 219112](#)). “Exceptions 1 through 5, above do not currently require a vote of the ATC Management, Inc. or ATC LLC owners.”

1           The proposal here to cap applicant to its current 34.07 percent voting on all  
2 corporate matters is based on a view that the current balance of ownership interests has  
3 achieved a reasonable, cost-effective expansion of needed transmission over ATC's 14 years  
4 of existence, as ultimately intended by the legislature. In other words, the apparent interplay  
5 of stakeholder interests has worked to serve the public. This record of experience supports  
6 maintaining the current balance by means of the cap as a practical device to avoid the  
7 consequences and uncertainties described above. Moreover, the cap should not be open for  
8 change unless and until at least three years (or more) of experience has been obtained in a  
9 post-acquisition world.

10 Q. Do you have any comment on the potential impact of the market value for the non-controlling  
11 ATC members?

12 A. Yes. A majority ownership interest commands more control and often can be sold for a  
13 premium. If WEC Energy is allowed to have full voting rights on fundamental issues, the  
14 minority owners would have no say and the market value of their investment can be  
15 expected to be diminished.

16 Q. Please describe Commission staff's proposed restrictions on the ATCMI board positions  
17 that could be held by WEC Energy affiliates.

18 A. ATCMI makes distinctions among its directors. As of December 31, 2013, ATCMI had  
19 ten directors. One director each was from WEC, MGE Energy, Integrys, Alliant, WPPI  
20 Energy, and one was the ATCMI CEO. These six directors served terms of one year. It  
21 also has four independent directors with terms of four years.

22           While these requirements match the requirements included in Wis. Stat.  
23 § 196.485(c) and Section 3.2(b) and Section 3.3 of ATCMI's Bylaws, ATC maintains

1 that this congruence is only coincidental, as the statutes applied only to the first 10-years  
2 of operations and the sections of the Bylaws applied only until the conversion of Class B  
3 common stock into Class A common stock which occurred December 29, 2010.

4 Regardless, it highlights a control issue. The statutes and bylaws originally restricted  
5 affiliate representation to one director, and the Commission may wish to continue this  
6 restriction. Whether ATCMI eliminates the one-year term position now held by an  
7 Integrys affiliate or not, the Commission may wish to restrict the applicant from holding  
8 more than the one position it currently holds.

9 Related to this concern is the process for the nomination of directors. Both Wis.  
10 Stat. § 196.485(c) and Section 3.2 of ATCMI's Bylaws had allowed WEC to  
11 nominate/appoint one director. ATCMI indicates that, "Selection is performed by the  
12 Nominating and Board Affairs Committee or by a shareholder or group of shareholders  
13 holding at least 3% of the outstanding shares of ATCMI."<sup>20</sup> The Commission may wish  
14 to restrict the applicant from influencing the selection of the directors. Further, it may  
15 wish to restrict WEC Energy and its affiliated director from nominating more than one  
16 director in total, essentially limiting them to the one position currently held by the  
17 applicant.

18 If the applicant is sincere about not dominating the board of directors, these  
19 restrictions should not be a concern.

20 Q. Do you have any concerns about successor entities?

21 A. Yes. If the applicant is allowed to retain a majority ownership share, the day may come  
22 when it may wish to sell ATC to a third party for market value. Currently, all aggregated

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<sup>20</sup> ([PSC REF#: 226464](#)).

1 ATCLLC sales are restricted to less than 50 percent in a year. However, changes in  
2 ATC's organization could eliminate the restriction, or the applicant could structure the  
3 sale to comply with the restrictions.

4 The applicant's promise not to exercise its full voting rights is not automatically  
5 transferable to a successor. Consequently, the purchasing entity would have majority  
6 control of ATC. In docket 5-EI-136 relating to the sale of the Kewaunee Nuclear Power  
7 Plant, a condition of the sale was that subsequent purchasers would be bound by certain  
8 conditions. If the Commission allows the applicant to retain more than a minority share  
9 as part of this Transaction, with voting restrictions, it may wish to require that the control  
10 limitations proposed be imposed on any successor purchasers.

11 Q. Please discuss other voting concerns.

12 A. The Amended and Restated Articles of Incorporation of ATCMI allow for the issuance of  
13 preferred stock, which at the directors' discretion may include voting rights, including  
14 voting rights for directors. This highlights the fact that there other means of acquiring  
15 more voting rights. One might be through the purchase of hybrid securities, perhaps with  
16 conversion rights. The Commission may wish to clarify that the applicant and its  
17 affiliates may not obtain additional voting interest in ATCMI or ATCLLC securities,  
18 including, but not limited to, ATCMI preferred stock.

19 Q. Do you have any further comments on voting restrictions?

20 A. Yes, the reason for the proposed voting restrictions is due to the fact that in their absence,  
21 WEC Energy would essentially have a super-majority ownership. Even the applicant  
22 recognizes that fact; hence its offer to limit voting on ATCMI's board of directors. In the

1 future, should WEC Energy's ownership interest decline to levels without excessive  
2 control, all of the voting restrictions could be eliminated.

3 Q. Please discuss informal influence.

4 A. As Mr. Reed noted, size and financial resources give an entity voice and informal  
5 influence. With a percentage interest of 60 percent, the applicant will have an  
6 overwhelming presence and informal influence. ATC indicates that a substantial number  
7 of decisions are made at the ATCMI level by the officers and the board. Reducing the  
8 allowable investment level for the applicant would reduce its informal influence, as well  
9 as its formal influence.

10 Q. What alternatives could the Commission consider for limiting the applicant's influence  
11 on ATC?

12 A. If the Commission is concerned about the control of ATC, there are at least three  
13 alternatives that could be considered. The first is to allow WEC Energy to have and  
14 continue to have over 60 percent investment level. If allowed to maintain this investment  
15 level, it would be in the public interest to limit the applicant's voting power as a way to  
16 mitigate influence. Nonetheless, I am concerned that a simple voting limitation is  
17 inadequate to accomplish this. Even so, it would be impossible to eliminate the informal  
18 influence that such an investment level would impart, especially considering that the next  
19 largest investment level would be Alliant's 16.38 percent investment.<sup>21</sup>

20 Q. What is the second alternative?

21 A. The second alternative is to allow the applicant, at the time of acquisition, to hold both  
22 the WEC-related and Integrys Energy-related investments. However, WEC Energy

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<sup>21</sup> WEC Energy's investment level would be 3.68 times larger than any other entity's.

1 would be restricted from making capital calls until its ownership interest declined to  
2 34 percent. The Commission should accompany this with an incremental investment  
3 level deadline(s) to ensure that the reduction of ownership interest occurs in a timely  
4 manner. If, as of a date certain (one proposal being the fifth anniversary of the  
5 acquisition date), WEC Energy's investment interest does not drop below that set by the  
6 Commission, WEC Energy should be obliged to redeem the excess stock over the upper  
7 investment level, sell to another member, or sell to outside investors.

8 As with the first option, the stricter voting limitations proposed by Commission  
9 staff would be included in this alternative.

10 Q. Please describe the third alternative.

11 A. The third alternative is to prohibit the acquisition of an ATC membership percentage  
12 above a given percentage set by this Commission. Upon consummation of the  
13 acquisition, WEC Energy will need to dispose of sufficient interest to bring its ownership  
14 to 34 percent.

15 Q. Are you concerned that, by restricting WEC Energy capital calls and investment in  
16 ATCLLC, ATCLLC may have difficulty raising the necessary capital?

17 A. No, I am not. First Section 3.6(c) of the Operating Agreement provides that other  
18 ATCLLC members may contribute additional capital if another member fails to meet its  
19 capital call. In addition, ATCMI is currently a privately-held company for which there is  
20 also the option of going public or issuing preferred stock.

21 Q. What would be the difference for ATC shareholder/members if ATC issues an initial  
22 public offering or is acquired by a publicly-traded company?

1 A. The main difference would be the optional retention of ownership interest by the current  
2 owners. In the event of an initial public offering, the current owners could either sell at  
3 market value or retain their ATC holdings. Acquisition by a publicly-traded company  
4 would result in the current owners holding securities in the acquiring company<sup>22</sup> or  
5 cashing out of their holdings altogether.

6 Q. Does this conclude your direct testimony?

7 A. Yes, it does.

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<sup>22</sup> They could also receive part cash and part stock as in the WEC-Integrus Energy acquisition.